PATENT **MS147303.01/MSFTP110US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:			
Applicant(s):	Thomas Alan Sponheim, *et al.*	Examiner:	Syed J. Ali
Serial No:	09/558,031	Art Unit:	2127
Filing Date:	April 25, 2000		

Title: EVENT DRIVEN SYSTEM AND METHOD FOR RETRIEVING AND DISPLAYING INFORMATION

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Appellants' representative submits this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP110US].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is Microsoft Corporation, the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellant, appellants' legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-46 are currently pending in the subject application and are presently under consideration. Claims 1-46 stand rejected by the Examiner. The rejection of claims 1-46 is being appealed.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

No amendments have been entered subsequent the Final Office Action dated May 27, 2005.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))

A. Independent Claim 1

Independent claim 1 recites a system for retrieving data, wherein the system comprises a client device programmed to create a communications channel in response to selecting an element displayed on a page and to communicate information about the element via the communications channel, the client device displaying on the page definitional information related to the selected element based on response data received via the communications channel; wherein the creation of the communications channel is event driven and responsive to at least one user-generated event. (*See, e.g.*, p. 2, line 22 – p. 3, line 4, and p. 9, lines 21-26).

B. Independent Claim 14

Independent claim 14 recites a system for retrieving data, wherein the system comprises a first computer programmed to, in response to selecting at least one element on a page displayed at the first computer, create a communications channel at the first computer and send first data indicative of the selected element via the communications channel; wherein the creation of the communications channel is event driven and responsive to at least one user-generated event, and a second computer operative to receive the first data, the second computer being programmed to send to the communications channel response data related to the selected element, wherein the first computer displays on the page definitional information relating to the at least one selected element based on the response data. (*See, e.g.*, p. 2, line 22 – p. 3, line 4, and p. 8, lines 16-27).

C. Independent Claim 27

Independent claim 27 recites a computer-readable medium having computer-executable instructions for performing acts, wherein the acts comprise creating a channel at a first computer for communicating information in response to selecting an element on a displayed page; wherein creating the channel is event driven and responsive to at least one user-generated event, submitting to a second computer via the channel data indicative of the selected element, receiving at the first computer from the second computer data corresponding to the selected element via the channel, and displaying on the displayed page definitional information based on the received data. (*See, e.g.*, p. 2, line 22 – p. 3, line 4, and p. 9, lines 21-26).

D. Independent Claim 37

Independent claim 37 comprises a method for dynamically retrieving data, wherein the method comprises selecting an element on a page displayed at a first computer, creating at the first computer a channel for communicating information about the element, wherein creating the channel is event driven and responsive to at least one user-generated event, submitting to a second computer data indicative of the selected element via the channel, receiving at the first computer response data corresponding to the

selected element, and displaying on the page definitional information relating to the selected element based at least in part on the received data. (*See, e.g.*, p. 2, line 22 – p. 3, line 4, and p. 9, lines 21-26).

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Claims 1-46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Berstis (U.S. 6,785,869).

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1-46 Under 35 U.S.C. §103(a)

Claims 1-46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Berstis (U.S. 6,785,869). Reversal of this rejection is respectfully requested for at least the following reason. Berstis fails to teach or suggest each and every aspect of appellants' claimed invention.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success ***must both be found in the prior art and not based on applicant's disclosure.*** *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The subject invention relates generally to communication of definitional data to a client requesting such data, wherein a communications channel is opened *in response to*

selection of an element. To that end, independent claim 1 recites ***a client device programmed to create a communications channel in response to selecting an element displayed on a page and to communicate information about the element via the communications channel, the client device displaying on the page definitional information related to the selected element based on response data received via the communications channel; wherein the creation of the communications channel is event driven and responsive to at least one user-generated event.*** Independent claims 14, 27, and 37 include similar features. Thus, for example, if a user receives a web page that includes a term or terms unfamiliar to the user, such user can select the term at the client and cause a communication channel to be created between the client and a server. Definitional information can then be delivered by way of the communications channel from the server to the client and displayed to the user. Berstis does not disclose or suggest these claimed aspects.

The cited reference discloses a spell check application that can be updated by a user, and the updates can then be delivered to several clients. (*See* abstract). In more detail, word glossaries can be organized and maintained hierarchically – thus, if a department creates and utilizes a word, then such word can be added to a glossary for the department (and not other departments within a company). In an even more specific example, an engineering department may utilize words/acronyms not employed by a human resource department, and Berstis teaches that a glossary/dictionary can be updated or modified with respect to the engineering department while the glossary/dictionary remains unchanged with respect to the human resource department. As described in previous correspondence and reiterated herein, however, it is readily apparent that Berstis fails to disclose, teach, or suggest ***a client device programmed to create a communications channel in response to selecting an element*** as recited in independent claim 1. Rather, Berstis teaches updating a spell check glossary in a client upon a server determining that an application that employs the spell check glossary is being utilized. It can thus be discerned that a communications channel between the client and the server is pre-existent, and that the client is not ***programmed to create a communications channel in response to selecting an element*** as claimed.

In an attempt to overcome this deficiency, the Examiner has asserted in the

Advisory Actions dated August 11, 2005 and September 19, 2005 that it would be obvious to one of ordinary skill in the art to undertake changes (that are neither taught nor suggested) to what is described in Berstis to render the claimed invention obvious. In more detail, the Examiner has essentially asserted that creation of a communications channel is disclosed between a client and a server (to proliferate updates in a spell-check glossary to a client) and that creating such communications channel ***in response to selecting an element*** is an implementation detail that need not be disclosed or suggested within Berstis. With still more specificity, the Examiner states that session time-outs are common features utilized to conserve bandwidth in an office environment. It is clear, however, that a session time-out relates to disconnecting a communications channel and bears no relation to ***a client device programmed to create a communications channel in response to selecting an element displayed on a page*** as claimed. Appellants' representative submits that the reasoning undertaken by the Examiner results in an improper basis upon which to maintain this rejection. Rather, in order to maintain this rejection, some teaching or suggestion of ***a client device programmed to create a communications channel in response to selecting an element*** must be shown in Berstis.

> To establish a case of obviousness, the cited reference(s) must provide "a teaching, suggestion, or reason to substitute [an element or limitation] ... in the prior art. ***The absence of such a suggestion to combine is dispositive in an obviousness determination.***" *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 U.S.P.Q.2d 1378 (Fed. Cir. 1997).

Thus, absent a teaching or suggestion of ***creating a communications channel in response to selecting an element*** within the cited reference, Berstis alone is insufficient to maintain this rejection under 35 U.S.C. §103(a).

In an attempt to provide the requisite teaching or suggestion, the Examiner has cited a portion of Berstis that describes a client as a network computer, wherein the client is not associated with a hard drive or a disk drive. (*See* col. 4, lines 52-59). The Examiner then asserts that "it would have been obvious to one of ordinary skill in the art to extrapolate the alternative embodiments described to see how a network computer would need to

communicate with a server when dictionary information was needed." (*See* the Advisory Action dated August 11, 2005). As previously stated and reiterated herein, it is clear, however, that a communication channel must be pre-existent between a network computer and a server, as the network computer has no local storage for running an application (as conceded by the Examiner). In other words, a communication channel between the network computer and the server must be created prior to opening an application and must be maintained to enable continued use of such application. Thus, even if a client computer is a network computer as described in Berstis, there remains a lack of teaching or suggestion of ***creating a communications channel in response to selecting an element*** as claimed. The Examiner then asserts that this is but one implementation, and that if the network computer had local storage that it would be obvious to open a communications channel when an update to the spell check tool was needed. Even if this were true, however, there still remains a lack of teaching or suggestion of creating the communications channel ***in response to selecting an element displayed on a page.***

To even further differentiate the invention as claimed to Berstis, it is commonly known and shown in Berstis that a spell-check tool is associated with a word processing application. In other words, the spell-check tool (and acronym/glossary tool) is a part of the application, as can be discerned from Figs. 4-8. These are located on client computers (as shown in Fig. 4). Thus, if a network computer had sufficient storage to include the application, the spell-check tool would be provided with such application. Therefore, there would be no reason to ***program a client device to create a communications channel in response to selecting an element displayed on a page and to communicate information about the element via the communications channel*** as recited in the subject claims – as all requisite information is available upon the client.

As Berstis fails to teach or suggest each and every element of appellants' claimed invention, it is readily apparent that the rejection with respect to claims 1, 14, 27, and 37 (and all claims that depend therefrom) should be reversed.

B. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-46 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP110US].

Respectfully submitted,
AMIN & TUROCY, LLP

Michael J. Medley
Reg. No. 57,058

AMIN & TUROCY, LLP
24th Floor, National City Center
1900 East 9th Street
Telephone: (216) 696-8730
Facsimile: (216) 696-8731

VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A system for retrieving data, comprising:

a client device programmed to create a communications channel in response to selecting an element displayed on a page and to communicate information about the element via the communications channel, the client device displaying on the page definitional information related to the selected element based on response data received via the communications channel; wherein the creation of the communications channel is event driven and responsive to at least one user-generated event.

2. The system of claim 1, wherein the client device is programmed to create a container on the page in response to the element being selected, the container being used to display the definitional information based on response data received via the communications channel.

3. The system of claim 1, wherein the response data received via the communications channel programs the client device dynamically to display the definitional information on the page.

4. The system of claim 3, wherein the response data received via the communications channel dynamically programs the client device to at least one of copy and transfer at least some of the response data to a container for displaying the definitional information based on the at least some of the response data on the page relative to the selected element.

5. The system of claim 4, wherein the client device is programmed to create the container on the page in response to the element being selected.

6. The system of claim 5, wherein the container is positioned adjacent to the selected element.

7. The system of claim 5, wherein the definitional information displayed in the container further includes selectable container elements.

8. The system of claim 7, wherein, in response to selecting at least one container element, the client device is further programmed to communicate via the communications channel information about the at least one container element.

9. The system of claim 1, wherein the communications channel is an inline floating frame programmed to access a resource on a server.

10. The system of claim 9, wherein the resource on the server is an Active Server Page associated with a database.

11. The system of claim 1, wherein the information about the element includes at least one of a uniform resource locator and metadata associated with the displayed page.

12. The system of claim 1, wherein the selected element includes at least one word.

13. The system of claim 1, wherein the displayed page further includes a plurality of selectable elements and the selected element includes at least one of the selectable elements.

14. A system for retrieving data, comprising:

a first computer programmed to, in response to selecting at least one element on a page displayed at the first computer, create a communications channel at the first computer and send first data indicative of the selected element via the communications channel; wherein the creation of the communications channel is event driven and responsive to at least one user-generated event; and

a second computer operative to receive the first data, the second computer being programmed to send to the communications channel response data related to the selected element;

wherein the first computer displays on the page definitional information relating to the at least one selected element based on the response data.

15. The system of claim 14, wherein the first computer is further programmed, in response to the element being selected, to create a container on the page, the container being employed to display the definitional information based on the response data.

16. The system of claim 15, wherein the definitional information displayed in the container further includes selectable container elements.

17. The system of claim 16, wherein, in response to selecting at least one container element, the first computer is further programmed to communicate to the second computer via the communications channel information about the at least one container element.

18. The system of claim 14, wherein the response data contains computer-executable instructions for programming the first computer dynamically to display the definitional information on the page based on the response data.

19. The system of claim 18, wherein the computer-executable instructions further program the first computer to at least one of copy and transfer at least some of the response data to a container for displaying definitional information on the page relative to the selected element based on the at least some of the response data.

20. The system of claim 19, wherein, in response to the element being selected, the first computer is programmed to create the container on the page.

21. The system of claim 20, wherein the container is positioned adjacent to the selected element.

22. The system of claim 14, wherein the communications channel includes an inline floating frame programmed to access a resource at the second computer.

23. The system of claim 22, wherein the resource at the second computer is an Active Server Page associated with a database.

24. The system of claim 14, wherein the first data further includes at least one of a uniform resource locator and metadata associated with the page displayed at the first computer.

25. The system of claim 14, wherein the selected element includes at least one word.

26. The system of claim 14, wherein the page displayed at the first computer further includes a plurality of selectable elements, the selected element including at least one of the plurality of selectable elements.

27. A computer-readable medium having computer-executable instructions for performing acts comprising:

creating a channel at a first computer for communicating information in response to selecting an element on a displayed page; wherein creating the channel is event driven and responsive to at least one user-generated event;

submitting to a second computer via the channel data indicative of the selected element;

receiving at the first computer from the second computer data corresponding to the selected element via the channel; and

displaying on the displayed page definitional information based on the received data.

28. The computer-readable medium of claim 27 having further computer-executable instructions for creating a container on the displayed page in response to the element being selected, the definitional information based on the received data being displayed in the container.

29. The computer-readable medium of claim 28, wherein the definitional information displayed in the container further includes selectable container elements, the computer-readable medium having further computer-executable instructions for, in response to selecting at least one container element, submitting to the second computer via the channel information about the at least one container element.

30. The computer-readable medium of claim 27, wherein the received data further includes computer-executable instructions for dynamically programming the first computer to display the definitional information on the displayed page.

31. The computer-readable medium of claim 30, wherein the received data further includes computer-executable instructions for dynamically programming the first computer to at least one of copy and transfer at least some of the received data from the channel to a container for displaying on the page definitional information based on at least some of the received data.

32. The computer-readable medium of claim 31 having further computer-executable instructions for creating the container on the displayed page of the first computer in response to the element being selected.

33. The computer-readable medium of claim 27, wherein the channel is an inline floating frame programmed to access a resource at the second computer.

34. The computer-readable medium of claim 33, wherein the resource at the second computer is an Active Server Page.

35. The computer-readable medium of claim 27, wherein the data indicative of the selected element further includes at least one of a uniform resource locator and metadata associated with the displayed page.

36. The computer-readable medium of claim 27, wherein the displayed page further includes a plurality of selectable elements, the selected element including at least one of the selectable elements.

37. A method for dynamically retrieving data, comprising:

selecting an element on a page displayed at a first computer;

creating at the first computer a channel for communicating information about the element; wherein creating the channel is event driven and responsive to at least one user-generated event;

submitting to a second computer data indicative of the selected element via the channel;

receiving at the first computer response data corresponding to the selected element; and

displaying on the page definitional information relating to the selected element based at least in part on the received data.

38. The method of claim 37, further including creating a container on the displayed page in response to the element being selected, the definitional information based on the received data being displayed in the container.

39. The method of claim 38, wherein the definitional information displayed in the container further includes selectable container elements, the method further including, in response to selecting at least one container element, sending to the second computer via the channel data indicative of the at least one container element.

40. The method of claim 39, wherein the received data further includes computer-executable instructions for dynamically programming the first computer to display the definitional information on the displayed page.

41. The method of claim 40, wherein the received data further includes computer-executable instructions for dynamically programming the first computer to at least one of copy and transfer at least some of the received data from the channel to a container for displaying on the page definitional information based on at least some of the retrieved data.

42. The method of claim 41, further including creating the container on the displayed page of the first computer in response to the element being selected.

43. The method of claim 37, wherein the channel is an inline floating frame programmed to access a resource at the second computer.

44. The method of claim 43, wherein the resource at the second computer is an Active Server Page associated with a database.

45. The method of claim 37, wherein the data indicative of the selected element further includes at least one of a uniform resource locator and metadata associated with the displayed page.

46. The method of claim 37, wherein the displayed page further includes a plurality of selectable elements, the selected element including at least one of the selectable elements.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.